

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED  
AHCA  
AGENCY CLERK

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

2015 JUN -3 A 743

Petitioner,

v.

THE NATIONAL DEAF ACADEMY, LLC d/b/a  
THE NATIONAL DEAF ACADEMY.

AHCA NO. 2015000404  
RENDITION NO.: AHCA-15-0320-S-OLC

Respondent.

**FINAL ORDER**

Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1) The parties have since entered into the attached Settlement Agreement, which is adopted and incorporated by reference into this Final Order. (Ex. 2)

2. The Respondent shall pay the Agency \$8,300.00. If full payment has been made, the cancelled check acts as receipt of payment and no further payment is required. If full payment has not been made, payment is due within 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. A check made payable to the "Agency for Health Care Administration" and containing the AHCA ten-digit case number should be sent to:

Central Intake Unit  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 61  
Tallahassee, Florida 32308

**ORDERED** at Tallahassee, Florida, on this 3 day of June, 2015.

  
Elizabeth Dudek, Secretary  
Agency for Health Care Administration

### NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with filing fee as prescribed by law, with the District Court of Appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

### CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 3<sup>rd</sup> day of June, 2015.



Richard J. Shoop, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
Telephone: (850) 412-3630

Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Central Intake Unit Agency for Health Care Administration (Electronic Mail)
Thomas J. Walsh II, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Jay Cohen, Esq. The Law Office of Jay Cohen, P.A. 100 Southeast 3 <sup>rd</sup> Avenue Suite 1500 Fort Lauderdale, Florida 33394 (U.S. Mail)

**STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION**

**STATE OF FLORIDA,  
AGENCY FOR HEALTH CARE  
ADMINISTRATION,**

Petitioner,

vs.

FRAES No: 2015000404

**THE NATIONAL DEAF ACADEMY, LLC,  
d/b/a NATIONAL DEAF ACADEMY,**

Respondent.  
\_\_\_\_\_  
/

**ADMINISTRATIVE COMPLAINT**

COMES NOW the Agency for Health Care Administration (hereinafter "Agency"), by and through the undersigned counsel, and files this Administrative Complaint against The National Deaf Academy, LLC, d/b/a National Deaf Academy (hereinafter "Respondent"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2014), and alleges:

**NATURE OF THE ACTION**

This is an action to impose upon the Respondent an administrative fine in the amount of eight thousand three hundred dollars (\$8,300.00), pursuant to Sections 394.879(4) and 408.815(1), Florida Statutes (2014), based upon the citation of deficient practice in violation of law.

**JURISDICTION AND VENUE**

1. The Agency has jurisdiction pursuant to Sections 120.60, 394.875 and Chapter 408, Part II, Florida Statutes (2014).

**EXHIBIT**

2. Venue lies pursuant to Rule 28-106.207, Florida Administrative Code (2014).

**PARTIES**

3. The State of Florida, Agency for Health Care Administration (“the Agency”), is the licensure and regulatory authority that oversees residential treatment centers in Florida and enforces the applicable federal and state regulations, statutes and rules governing such facilities.

Chs. 394, Part IV, and 408, Part II, Fla. Stat. (2014); Ch. 65E-9, Fla. Admin. Code.

4. Respondent operates a level II residential treatment center located at 19650 U.S. Highway 441, Mount Dora, Florida 32757 (License No. 40).

5. Respondent is currently and had previously been a licensed residential treatment center under the licensing authority of the Agency, and was required to comply with all applicable rules and statutes.

**COUNT I**

6. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

7. That Florida law provides:

Staff orientation and training.

(a) The provider shall have, and implement on an ongoing basis, a written plan for the orientation, ongoing training, and professional development of staff.

(b) The provider shall implement orientation and training programs for all new employees and ongoing staff training to increase knowledge and skills and improve quality of care and treatment services.

(c) The provider shall conduct orientation for each new employee during the first 2 months of employment. The orientation shall include specific job responsibilities, policies and procedures, care and supervision of children, and competency-based first aid and CPR.

(d) The provider shall document training received by staff, including staff name and position, training subject, date completed and signature of instructor. The documented training shall be filed in the staff member's personnel record and be available for review by the department and the agency.

(e) The provider shall implement a minimum of 40 hours of in-service training annually for all staff and volunteers who work directly with children. Continuing education for professional licenses and certifications may count towards training hours if the training covers the appropriate areas. This training shall cover all policies and procedures relevant to each position and shall, at a minimum, include each of the following:

1. Administrative:

- a. *Administrative policies and procedures and overall program goals;*
- b. *Federal and state laws and rules governing the program;*
- c. *Identification and reporting of child abuse and neglect;*
- d. *Protection of children's rights; and*
- e. Confidentiality.

2. Safety:

- a. Disaster preparedness and evacuation procedures;
- b. Fire safety;
- c. Emergency procedures;
- d. Violence prevention and suicide precautions; and
- e. First aid and CPR, with competency demonstrated annually.

3. Child development:

- a. Child supervision skills;
- b. Children's physical and emotional needs;
- c. Developmental stages of childhood and adolescence;
- d. Family relationships and the impact of separation;
- e. Substance abuse recognition and prevention; and
- f. Principles and practices of child care.

4. Treatment services:

- a. Individualized treatment that is culturally competent;
- b. Treatment that addresses issues the child may have involving sexual or physical abuse, abandonment, domestic violence, separation, divorce, or adoption;
- c. Behavior management techniques include, but are not limited to: preventing problem behavior, defining and teaching expectations, teaching and encouraging the child's long-term use of new skills as alternative behaviors, contingency management, teaching and promoting choice making and self-management skills, time-out, point systems or level systems, de-escalation procedures, and crisis prevention and intervention;
- d. Treatment plan development and implementation;
- e. Treatment that supports the child's permanency goals; and

f. The provider shall ensure ongoing training and be able to produce documentation of such training on the use of restraint and seclusion, physical escort, time-out, de-escalation procedures and crisis prevention and intervention.

(I) Before staff may participate in any use of restraint or seclusion, staff shall be competency trained to minimize the use of restraint and seclusion, to use alternative, non-physical, non-intrusive behavioral intervention techniques to handle agitated or potentially violent children, and to use restraints and seclusion safely.

(II) Staff shall complete a training course in the safe and appropriate use of seclusion and restraint and in the use of alternative non-intrusive behavior management techniques. The training course shall be provided by individuals qualified by education, training, and experience to provide such training. Competencies shall be demonstrated on a semiannual basis. Training requirements for all staff who participate in the use of restraint and seclusion shall include:

(A) An understanding of the underlying causes, e.g., medical, behavioral and environmental, of consequential behaviors exhibited by the children being served;

(B) How staff behaviors can affect the behaviors of others, especially children with a history of trauma;

(C) The use of non-physical interventions, such as de-escalation, mediation, active listening, self-protection and other techniques, such as time-out for the purpose of preventing potential and intervening in emergency safety situations;

(D) Recognizing signs of respiratory and cardiac distress in children;

(E) Recognizing signs of depression and potential suicidal behaviors;

(F) Certification in the use of cardiopulmonary resuscitation (CPR). Competency based re-certification in CPR is required annually;

(G) How to monitor children in restraint or seclusion; and

(H) The safe use of approved restraint techniques, including physical holding techniques, take-down procedures, and the proper application, monitoring and removal of restraints.

(III) Training requirements for staff who are authorized to monitor a child's condition and perform assessments while the child is in seclusion or restraint shall include:

(A) Taking vital signs and interpreting their relevance to the physical safety of the child;

(B) Tending to nutritional and hydration needs;

(C) Checking circulation and range of motion in the extremities;

- (D) Addressing hydration, hygiene and elimination;
  - (E) Addressing physical and psychological status and comfort;
  - (F) Assisting children to de-escalate to a point that would allow for the discontinuation of restraint or seclusion;
  - (G) Recognizing when the emergency safety situation has ended and the safety of the child and others can be ensured so the restraint or seclusion can be discontinued; and
  - (H) Recognizing the need for and when to contact a medically trained licensed practitioner or emergency medical services in order to evaluate and treat the child's physical status.
- Fla. Admin. Code R. 65E-9.007(5)(Emphasis added).

8. That on December 24, 2014, the Agency completed a complaint survey of the Respondent and its Facility.
9. That based upon the review of records and interview, Respondent failed to ensure that all staff had undergone annual training for facility policies and procedures regarding the identification of and reporting of abuse or neglect and incident reporting for two (2) of ten (10) sampled staff, the same being contrary to the mandates of law.
10. That on December 24, 2014 at 11:00 AM, Respondent's Quality Manager went through every training document in the facility's training book and found no evidence that Respondent's third shift Nurse Supervisor and Respondent's Resident Advocate had undergone abuse training during the last two (2) years.
11. That Petitioner's representative reviewed Respondent's personnel records during the survey and noted as follows;

- a. Third Shift Nurse Supervisor – the file contained no evidence that the staff member had undergone training in the facility's policy and procedure for abuse reporting since November 26, 2012,

- b. Resident Advocate:
  - a. The file contained no evidence that the staff member had undergone training in the facility's policy and procedure for abuse reporting since the employee's orientation on September 6, 2011.
  - b. The file contained no evidence that the staff member had undergone training in incident reporting since the employee's orientation on September 6, 2011.
- 12. That Petitioner's representative interviewed Respondent's business office/ human resource assistant on December 24, 2014 at 10:33 AM who indicated that there is no evidence Respondent's Resident Advocate had undergone additional training since the employee's orientation in 2011.
- 13. That the above reflects Respondent's failure to failed to ensure that all staff had undergone annual training for facility policies and procedures regarding the identification of and reporting of abuse or neglect and incident reporting as required by law.
- 14. Under Florida law, in accordance with part II of chapter 408, the Agency may impose an administrative penalty of no more than \$500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend and revoke the license and deny the renewal application of such licensee. In imposing such penalty, the Agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. § 394.879(4), Fla. Stat. (2014).
- 15. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable

rules, the Agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2014).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of seven hundred dollars (\$700.00) against Respondent, a residential treatment center in the State of Florida, pursuant to §§ 394.879 and 408.813, Florida Statutes (2014).

#### COUNT II

16. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.
17. That Florida law provides:

- (1) The provider shall protect children's rights under the federal and state constitutions and as specified in Sections 394.459 and 394.4615, F.S. The provider shall also ensure that:
  - (a) Physical punishment and treatment modalities that place the child at risk of physical injury or pain or death, including electroconvulsive or other convulsive therapy, "cocoon therapy," or other hazardous procedures shall never be used.
  - (b) *Children shall not be subjected to cruel, severe, unusual or unnecessary punishment or assigned excessive exercise or work duties, nor shall they be subjected to physical or mental abuse or corporal punishment.*
  - (c) The simultaneous use of seclusion and mechanical restraint is prohibited.
  - (d) Children shall not be subjected to hazing, verbal abuse, coercion or remarks that ridicule them, their families or others.
  - (e) Children shall not be denied food, water, clothing, or medical care.
  - (f) Children shall not be exploited or required to make public statements to acknowledge gratitude to the provider program or perform at public gatherings.
  - (g) Identifiable pictures of children shall not be used without prior written

consent of the parent or guardian. The signed consent form for any such usage shall be event-specific, indicate how the pictures will be used, and placed in the child's clinical record.

Fla. Admin. Code R. 65E-9.012(1)

18. That Florida law provides:

(3) Child abuse and neglect.

(a) The provider, as a mandated reporter, shall report to the department and the Abuse Registry all suspected cases of child abuse, neglect, and exploitation in accordance with Chapter 39 and Section 394.459, F.S.

(b) Each child shall have ready access to a telephone in order to report an alleged abuse, neglect or exploitation. The provider shall inform each child verbally and in writing of the procedure for reporting abuse. A written copy of that procedure, including the telephone number of the abuse hotline and reporting forms, shall be posted in plain view within eighteen inches of the telephone(s) designated for use by the children.

(c) *The provider shall establish and implement a written procedure for the immediate protection of the alleged victim or any other potential victim and prevention of a recurrence of the alleged incident pending investigation by the department or law enforcement.*

(d) The provider shall require each paid and volunteer staff member, upon hiring and every 12 months thereafter, to read and sign a statement summarizing the child abuse and neglect laws and outlining the staff member's responsibility to report all incidents of child abuse and neglect. Such signed statements shall be placed in each employee's personnel file.

(e) Residents' rights posters, including those with the telephone numbers for the Florida Abuse Hotline, Statewide Advocacy Council and the Advocacy Center for Persons with Disabilities, shall be legible, a minimum of 14 point font size, and shall be posted immediately next to telephones which are available for residents' use

Fla. Admin. Code R. 65E-9.012(3).

19. That on December 24, 2014, the Agency completed a complaint survey of the Respondent and its Facility.

20. That based upon observation, interview, and the review of documents, Respondent failed to protect its residents from alleged abuse or neglect and or failed to implement its policy and procedure related to allegations of abuse or neglect, the same being contrary to the requirements of law.

21. That Petitioner's representative reviewed Respondent's policy and procedure entitled "Reporting Allegations/Disclosures of Abuse and/or Neglect," last revised March 21, 2013, and noted as follows:

- a. The policy stated any employee who knows or has reasonable cause to suspect abuse to any resident "... shall immediately report such knowledge or suspicion to the Florida Abuse Hotline of the Department of Children and Families in accordance with Chapters 39 and 415 of the Florida Statutes."
- b. The facility policy defines "Abuse" as "... any willful act or threatened act that results in any physical, mental or sexual injury or harm that causes or is likely to cause the child's physical, mental or emotional health to be significantly impaired. Abuse of a child includes overt acts or omissions."
- c. The policy also stated "All efforts to protect the resident from harm will be made. NDA will protect each resident from reoccurrence of the abuse and no contact with the abuser will be permitted."
- d. The policy further provides "Employees involved in abuse investigations shall be immediately suspended pending completion of internal investigation. During the course of the investigation if it is discovered other employees have been aware of the abuse/neglect, said staff shall be

interviewed, statements taken and disciplinary action up to including termination will be taken pending results of the investigation."

22. That Petitioner's representative interviewed resident number five (5), on December 22, 2014 at noon who indicated as follows:

- a. The resident witnessed staff kick open a door and staff dragging resident number one (1) through the door and the resident's face hit the door.
- b. The resident heard three (3) staff members discuss that they won't report the event as resident number one (1) was self-abusive and hits the resident's own face anyway.
- c. Staff have been unkind and intimidating to resident number five (5) since the resident reported the incident.

23. That Petitioner's representative interviewed resident number five (5), on December 24, 2014 at 9:13 AM who indicated as follows:

- a. A staff member had threatened to take residents to their rooms if they did not behave.
- b. Another resident was pulled to the resident's room by the staff person and resident number five (5) could hear noises but was not sure what the noises meant.

24. That Petitioner's representative reviewed Respondent's incident binder for December 2014 and noted as follows:

- a. No incident report was located regarding the above mentioned allegation related to resident number one (1), but three documents totaling four (4) pages regarding the incident were found in the binder held together with a

paper clip.

- a. The top page was a copy of an electronic mail from the Resident Advocate, dated December 16, 2014, addressed to Respondent's Administrator, Quality Manager, Risk Manager, Director of Nursing, and Staff Director stating that resident number five (5) "... has submitted a grievance on 12/13/14, regarding the poor treatment to [the resident] and other residents by the staff."
- b. The electronic mail further stated that resident number five (5) reported "... that on Friday 12/12/14 during the day (maybe after lunch not sure of time) the staff allowed the dorm door to hit [the resident] in the face [the resident being resident number one (1)]."
- c. The electronic mail further stated that resident number five (5) alleged "... staff stated that she [the staff member] was not reporting the incident [not planning to document] because [resident number one (1)] always hits []self anyway, other staff laughed and agreed."
- d. The electronic mail continues stating resident number five (5) alleged that "... staff has had [resident number five (5)] or other residents to go into their bedrooms out of camera view and yell at them or even hit them. [Resident number five (5)] did not name any specific staff members in this case however [the resident] presents this as common practice."
- e. The electronic mail continues that resident number five (5) "...

currently fears that [the resident] will be retaliated against and states that since seeing talking with me this morning it has already started."

- b. The second of the three documents found in the incident report binder was a document dated December 16, 2014 written by the Risk Manager regarding resident number one (1) which stated "The grievance came from another resident that a staff let the door hit another resident causing injury. The resident cannot communicate and currently has a one to one 24/7."
- c. This document further stated "No incident report was filed or was it reported to nursing staff. A bruise was noted later by the family. This was communicated to the nursing staff that did an immediate body assessment and will continue this daily."
- d. The third document, dated December 15, 2014, was a diagram of the human body with x's indicating injuries on the body of resident number one (1) indicating the resident had bruising to the forehead, bilateral cheekbones and chin.

25. That Petitioner's representative observed resident number one (1) on December 22, 2014 at 11:55 PM and noted as follows:

- a. The resident was outside the dining area.
  - b. The resident had raised dark areas on the forehead and cheek bones and small open areas on the chin.
  - c. The resident was unable to communicate effectively.
26. That Petitioner's representative asked Respondent's representatives for a copy of the

internal investigation regarding the allegation of staff allowing a door to hit resident number one (1) in the resident's face and Respondent could produce no evidence reflecting that an internal investigation was completed by the facility regarding this allegation of abuse.

27. That Petitioner's representative interviewed Respondent's Facility Quality Manager, regarding the allegation of abuse related to resident number one (1), on December 22, 2014 at 2:47 PM who indicated as follows:

- a. The only investigation done by the facility into the allegation regarding staff allowing a door to hit a resident in the face was a viewing of the video tape.
- b. The video tape was of no use as the area the alleged incident occurred was not covered by the camera.
- c. On December 23, 2014 at 8:50 AM, he added that a facility investigation into the allegation was not done, an incident report was not done, and the incident report would have triggered the investigation.

28. That Petitioner's representative interviewed Respondent's Risk Manager on December 23, 2014 at 10:0 AM who indicated:

- a. There was no evidence an investigation into the door hitting a resident in the face was done.
- b. There was no evidence produced reflecting that any staff member was interviewed, though more than one was indicated in the original grievance.
- c. She missed that other staff were involved in the incident.

29. That Petitioner's representative interviewed Respondent's Director of Patient Services, regarding the allegation of abuse related to resident number one (1), on December 22, 2014 at

10:35 AM who indicated as follows:

- a. He looked at video and the camera did not show the door so that a determination could be made that the incident did or did not occur.
  - b. The alleged perpetrator was suspended during the investigation, from December 17 through 19, 2014, and then brought back when the video could not determine the allegation had or had not occurred.
  - c. He was not aware of any investigation other than viewing a video that did not capture a view of the area of home where the alleged incident occurred
30. That Petitioner's representative asked Respondent's representatives for a copy of the internal investigation regarding the allegation of staff taking residents to their rooms to be yelled at or hit, out of sight of monitoring surveillance cameras, and Respondent could produce no evidence reflecting that an internal investigation was completed by the facility regarding this allegation of abuse.
31. That Petitioner's representative interviewed Respondent's Quality Manager on December 24, 2014 at 11:15 AM regarding the allegations of abuse made by resident number five (5) and the manager indicated:
- a. There is no evidence the facility investigated the allegation made by resident number five (5).
  - b. "Staff has had [the resident] or other residents to go into their bedrooms out of camera view and yell at them or even hit them. [The resident] did not name any specific members in this case however [the resident] presents this as common practice."
32. That Petitioner's representative asked Respondent's representatives for a copy of the

internal investigation regarding the allegation of staff retaliating against resident number five (5) due to the resident's making allegations regarding staff mistreatment of residents and Respondent could produce no evidence reflecting that an internal investigation was completed by the facility regarding this allegation of abuse.

33. That Petitioner's representative interviewed Respondent's Quality Manager on December 24, 2014 at 9:30 AM regarding resident number five (5) who indicated there is no evidence the facility has investigated the allegation of staff retaliation against the resident but the resident was now assigned a 1-1 supervisor for the resident's protection until the investigation was completed.
34. That the above reflects Respondent's failure protect its residents from alleged abuse or neglect and or failed to implement its policy and procedure related to allegations of abuse or neglect where, inter alia, Respondent failed to:
  - a. Complete mandated reporting for allegations of abuse or neglect.
  - b. Implement Respondent's policy and procedure related to the investigation of allegations of abuse or neglect.
  - c. Implement Respondent's policy and procedure related to the protection of alleged or potential victims of abuse or neglect.
  - d. Implement Respondent's policy and procedure related to the suspension of employees alleged to have participated in acts of abuse or neglect.
  - e. Implement Respondent's policy and procedure related to the interview of employees related to allegations of abuse or neglect.
35. That Respondent was cited with deficient practice as identified above.
36. Under Florida law, in accordance with part II of chapter 408, the Agency may impose an

administrative penalty of no more than \$500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend and revoke the license and deny the renewal application of such licensee. In imposing such penalty, the Agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. § 394.879(4), Fla. Stat. (2014).

37. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the Agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2014).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of seven thousand six hundred dollars (\$7,600.00) against Respondent, a residential treatment center in the State of Florida, pursuant to §§ 394.879 and 408.813, Florida Statutes (2014).

#### **CLAIM FOR RELIEF**

The Petitioner, State of Florida, Agency for Health Care Administration, respectfully seeks a final order that:

1. Makes findings of fact and conclusions of law in favor of the Agency.
2. Imposes an administrative fine against the Respondent as set forth above in the total sum of eight thousand three hundred dollars (\$8,300.00).

3. Orders any other relief authorized by law that is just and appropriate.

Respectfully submitted on this 3 day of February, 2015.

  
\_\_\_\_\_  
Thomas J. Walsh II, Senior Attorney  
Florida Bar No. 566365  
Office of the General Counsel  
Agency for Health Care Administration  
525 Mirror Lake Drive North, Suite 330  
St. Petersburg, Florida 33701  
Telephone: (727) 552-1947  
Facsimile: (727) 552-1440  
walsht@ahca.myflorida.com

**NOTICE**

The Respondent is notified that it/he/she has the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative action are set out in the attached Election of Rights form.

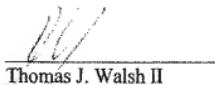
The Respondent is further notified if the Election of Rights form is not received by the Agency for Health Care Administration within twenty-one (21) days of the receipt of this Administrative Complaint, a Final Order will be entered against the Respondent.

The Election of Rights form shall be made to the Agency for Health Care Administration and delivered to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights form have been served to Greg Sizemore, Administrator, The National Deaf Academy, LLC, 19650 US Highway 441, Mount Dora, Florida 32757, by U.S. Certified Mail, Return Receipt No. 7011 0470 0000 4509 3913, and by Regular U.S. Mail to CT Corporation

System, Registered Agent for The National Deaf Academy, LLC, 1200 South Pine Island Road, Plantation, Florida 33324, on this 3 day of February, 2015.



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Thomas J. Walsh II

Copy furnished to:

Kriste Mennella  
Field Office Manager  
Agency for Health Care Administration

**STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION**

**RE: The National Deaf Academy, LLC  
d/b/a National Deaf Academy**

**CASE No. 2015000404**

**ELECTION OF RIGHTS**

This Election of Rights form is attached to a proposed action by the Agency for Health Care Administration (AHCA). The title may be Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint.

**Your Election of Rights must be returned by mail or by fax within 21 days of the day you receive the attached Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint.**

If your **Election of Rights** with your selected option is not received by AHCA within twenty-one (21) days from the date you received this notice of proposed action by AHCA, you will have given up your right to contest the Agency's proposed action and a final order will be issued.

(Please use this form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes (2006) and Rule 28, Florida Administrative Code.)

**PLEASE RETURN YOUR ELECTION OF RIGHTS TO THIS ADDRESS:**

Agency for Health Care Administration  
Attention: Agency Clerk  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, Florida 32308.  
Phone: 850-412-3630      Fax: 850-921-0158.

**PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS**

**OPTION ONE (1)**        I admit to the allegations of facts and law contained in the Notice of Intent to Impose a Late Fine or Fee, or Administrative Complaint and I waive my right to object and to have a hearing. I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

**OPTION TWO (2)**        I admit to the allegations of facts contained in the Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, but I wish to be heard at an informal proceeding (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine should be reduced.

**OPTION THREE (3)**        I dispute the allegations of fact contained in the Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, and I request a formal hearing (pursuant to Subsection 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

**PLEASE NOTE:** Choosing **OPTION THREE (3)**, by itself, is **NOT** sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above within 21 days of your receipt of this proposed administrative action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which **requires** that it contain:

1. Your name, address, and telephone number, and the name, address, and telephone number of your representative or lawyer, if any.
2. The file number of the proposed action.
3. A statement of when you received notice of the Agency's proposed action.
4. A statement of all disputed issues of material fact. If there are none, you must state that there are none.

Mediation under Section 120.573, Florida Statutes, may be available in this matter if the Agency agrees.

License type: \_\_\_\_\_ (ALF? nursing home? medical equipment? Other type?)

Licensee Name: \_\_\_\_\_ License number: \_\_\_\_\_

Contact person: \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_

Address: \_\_\_\_\_  
Street and number \_\_\_\_\_ City \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_ Email(optional) \_\_\_\_\_

I hereby certify that I am duly authorized to submit this Notice of Election of Rights to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA,  
AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Petitioner,

vs.

FRAES No: 2015000404

THE NATIONAL DEAF ACADEMY, LLC,  
d/b/a NATIONAL DEAF ACADEMY,

Respondent.

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and Respondent, The National Deaf Academy, LLC d/b/a National Deaf Academy (hereinafter "Respondent"), pursuant to Section 120.57(4), Florida Statutes, each individually, a "party," collectively as "parties," hereby enter into this Settlement Agreement ("Agreement") and agree as follows:

WHEREAS, Respondent is a level II residential treatment center licensed pursuant to Chapters 394, Part IV, and 408, Part II, Florida Statutes, and Chapter 65E-9, Florida Administrative Code; and

WHEREAS, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over Respondent, pursuant to Chapters 394, Part II, and 408, Part II, Florida Statutes; and

WHEREAS, the Agency served Respondent with an administrative complaint on or about February 9, 2015, notifying the Respondent of its intent to impose administrative fines in the amount of eight thousand three hundred dollars (\$8,300.00); and

**EXHIBIT**

WHEREAS, the parties have negotiated and agreed that the best interest of all the parties will be served by a settlement of this proceeding;

WHEREAS, Respondent denies any and all wrongdoing and/or deficiencies that are the subject of the Administrative Complaint served on or about February 9, 2015,

WHEREAS, it is understood and agreed by the parties that this settlement is in full compromise of the claims and issues raised in the Administrative Complaint served on or about February 9, 2015, and that neither this Agreement nor the payment pursuant to this Agreement shall be construed as an admission of liability on behalf of Respondent, and

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals herein are true and correct and are expressly incorporated herein.
2. Both parties agree that the "whereas" clauses incorporated herein are binding findings of the parties.
3. Upon full execution of this Agreement, Respondent agrees to waive any and all appeals and proceedings to which it may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, provided, however, that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.
4. Upon full execution of this Agreement, Respondent agrees to pay eight thousand three hundred dollars (\$8,300.00) to the Agency as full and final settlement of the claims and

issues raised in the Administrative Complaint served on February 9, 2015, within thirty (30) days of the entry of the Final Order.

5.     Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie in Circuit Court in Leon County, Florida.

6.     By executing this Agreement, Respondent denies, and the Agency asserts the validity of the allegations raised in the survey referenced herein. No agreement made herein shall preclude the Agency from imposing a penalty against Respondent for any deficiency/violation of statute or rule identified in a future survey of Respondent, pursuant to the provisions of Chapters 394, Part IV, 408, Part II, Florida Statutes, and Chapter 65E-9, Florida Administrative Code.

7.     No agreement made herein shall preclude the Agency from using the alleged deficiencies from the survey in any decision regarding licensure of Respondent, including, but not limited to, a demonstrated pattern of deficient performance. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Respondent acknowledges and agrees that this Agreement shall not preclude or estop any other federal, state, or local agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts alleged in the Survey. This agreement does not prohibit the Agency from taking action regarding Respondent's Medicaid provider status, conditions, requirements or contract.

8.     Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled case.

9.     Each party shall bear its own costs and attorney's fees.

10.    This Agreement shall become effective on the date upon which it is fully executed by all the parties.

11. Respondent for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this Agreement, by or on behalf of Respondent or related facilities.

12. This Agreement is binding upon all parties herein and those identified in paragraph eleven (11) of this Agreement.

13. In the event that Respondent was a Medicaid provider at the subject time of the occurrences alleged in the complaint herein, this settlement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any sanctions pursuant to Rule 59G-9.070, Florida Administrative Code.

14. Respondent agrees that if any funds to be paid under this Agreement to the Agency are not paid within thirty-one (31) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent by the Agency for said amounts until paid.

15. The undersigned have read and understand this Agreement and have the authority to bind their respective principals to it.

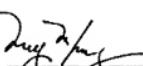
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

17. This Agreement supersedes any prior oral or written agreements between the parties.

18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

19. All parties agree that a facsimile signature suffices for an original signature.

The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.

  
\_\_\_\_\_  
Molly McKinstry, Deputy Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Building #1  
Tallahassee, Florida 32308

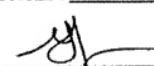
DATED: 6/3/15

\_\_\_\_\_  
Jay Cohen, Esq.  
Counsel for Respondent  
The Law Office of Jay Cohen, P.A.  
100 Southeast 3<sup>rd</sup> Avenue, Suite 1500  
Fort Lauderdale, FL, 33394  
Florida Bar No. 292192

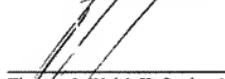
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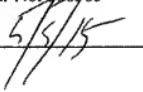
  
\_\_\_\_\_  
Stuart F. Williams, General Counsel  
Office of the General Counsel  
Agency for Health Care Administration  
2727 Mahan Drive, MS #3  
Tallahassee, Florida 32308  
Florida Bar No. 670731

DATED: 5/26/15

  
\_\_\_\_\_  
Greg Sizemore  
Chief Executive Officer  
The National Deaf Academy, LLC

DATED: 4/21/15

  
\_\_\_\_\_  
Thomas J. Walsh II, Senior Attorney  
Office of the General Counsel  
Agency for Health Care Administration  
525 Mirror Lake Drive North, Suite 330G  
St. Petersburg, Florida 33701  
Florida Bar No. 506365

DATED: 5/5/15  


17. This Agreement supersedes any prior oral or written agreements between the parties.
18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.
19. All parties agree that a facsimile signature suffices for an original signature.

The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.

---

Molly McKinstry, Deputy Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Building #1  
Tallahassee, Florida 32308

DATED: \_\_\_\_\_

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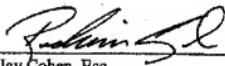
Stuart F. Williams, General Counsel  
Office of the General Counsel  
Agency for Health Care Administration  
2727 Mahan Drive, MS #3  
Tallahassee, Florida 32308  
Florida Bar No. 670731

DATED: \_\_\_\_\_

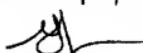
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Thomas J. Walsh II, Senior Attorney  
Office of the General Counsel  
Agency for Health Care Administration  
525 Mirror Lake Drive North, Suite 330G  
St. Petersburg, Florida 33701  
Florida Bar No. 566365

DATED: 5/18/15

  
F. Bar No. 84005  
Jay Cohen, Esq.  
Counsel for Respondent  
The Law Office of Jay Cohen, P.A.  
100 Southeast 3<sup>rd</sup> Avenue, Suite 1500  
Fort Lauderdale, FL, 33394  
Florida Bar No. 292192

DATED: 4/26/15

  
Greg Sizemore  
Chief Executive Officer  
The National Deaf Academy, LLC

DATED: 4/21/15